

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MASSACHUSETTS

FILED
CLERKS OFFICE

2004 JUL 13 P 12:15

JANEL RUSSELL DESIGNS, INC.,

Plaintiff,

v.

BARMAKIAN METRO, INC.,

Defendant.

U.S. DISTRICT COURT
DISTRICT OF MASS
Civil Action No. 04-10821-RGS

ANSWER AND JURY DEMAND

FIRST DEFENSE

Defendant Barmakian Metro, Inc. ("Barmakian") responds to the numbered paragraphs of the Complaint as follows:

Parties and Jurisdiction

1. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies them.
2. Barmakian denies the allegations in Paragraph 2.
3. Barmakian neither admits nor denies the allegations in Paragraph 3, which constitute conclusions of law.

Factual Allegations

4. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and therefore denies them.
5. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore denies them.

6. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and therefore denies them.

7. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and therefore denies them.

8. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore denies them.

9. Barmakian admits that a copy of a letter from Barmakian Brothers is attached to the Complaint as Exhibit C, and states that the document speaks for itself. Barmakian denies the remaining allegations in Paragraph 9.

10. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore denies them.

11. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and therefore denies them.

12. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies them.

Count I: Copyright Infringement

13. Barmakian incorporates by references its responses to Paragraphs 1 through 12.

14. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and therefore denies them.

15. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies them.

16. Barmakian neither admits nor denies the allegations in Paragraph 16, which constitute conclusions of law.

17. Barmakian neither admits nor denies the allegations in Paragraph 17, which constitute conclusions of law.

18. Barmakian admits that, at various times, it has had access to plaintiff's products. Barmakian is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 18 and therefore denies them.

19. Barmakian denies the allegations in Paragraph 19.

20. Barmakian denies the allegations in Paragraph 20.

Count 2: Unfair Competition

21. Barmakian incorporates by reference its responses to Paragraphs 1 through 20.

22. Barmakian denies the allegations in Paragraph 22.

Count 3: Unfair Trade Practices

23. Barmakian incorporates by reference its responses to Paragraphs 1 through 22.

24. Barmakian denies the allegations in Paragraph 24.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Complaint is barred, in whole or in part, by laches or estoppel.

FOURTH DEFENSE

The Complaint is barred, in whole or in part, by the applicable statute of limitations.

FIFTH DEFENSE

The Complaint is barred, in whole or in part, because plaintiff's design is not original or not entitled to copyright protection.

SIXTH DEFENSE

The Complaint is barred, in whole or in part, because of plaintiff's abandonment, non-use, or uncontrolled use of the design.

SEVENTH AFFIRMATIVE DEFENSE

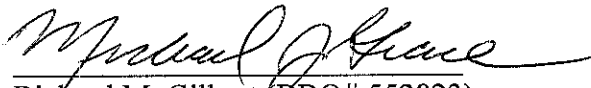
The Complaint is barred, in whole or in part, because of plaintiff's misuse or unclean hands.

JURY DEMAND

BARMAKIAN DEMANDS A TRIAL BY JURY.

BARMAKIAN METRO, INC.,

By its attorneys,



Richard M. Gilbert (BBO# 552823)

Michael J. Grace (BBO# 205875)

Adler Pollock & Sheehan PC

175 Federal Street

Boston, MA 02110

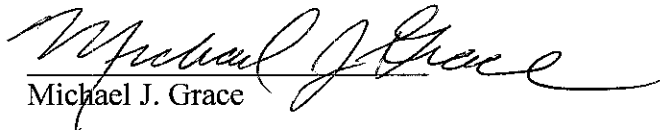
(617) 482-0600 (Telephone)

(617) 482-0604 (Fax)

Date: July 9, 2004

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2004, a copy of the Answer and Jury Demand was served on plaintiff's counsel by first class mail, postage prepaid.


Michael J. Grace

296994_1.doc